

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 112 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INDRAJIT RATILAL SHAH

Versus

JAMBUSAR NAGAR PANCHAYAT

Appearance:

MR VIMAL PATEL for Petitioner

MR NK MAJMUDAR for PB MAJMUDAR for Respondent No.1,2

MS HARSHA DEVANI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/11/97

ORAL JUDGEMENT

1. Challenge has been made by the petitioner to the resolution of the respondent No.1 bearing No.408 dated 13th December, 1983 under which it is resolved that the petitioner should be displaced from his post of Secretary of the said Nagar Panchayat and amount of Rs.14939-35 be recovered from him. Challenge has also been made by the petitioner to the resolution of the respondent No.1

bearing No.128 dated 30th November, 1983 under which it is resolved that the audit objection in para-5A be implemented and in pursuance of that resolution the aforesaid resolution has been passed.

2. Under the audit objection it has been objected that the post of Secretary given to the petitioner cannot be recognised and the amount of salary paid to the petitioner is objected.

3. This petition has been admitted by this Court on 13th January, 1984 and the impugned resolutions were ordered to be stayed by this Court. So the fact is that the petitioner worked as Secretary and has drawn the salary of the said post for all these years. It is further not in dispute between the parties that during the pendency of this special civil application the petitioner also retired from the services.

4. One of the contentions raised by the learned counsel for the petitioner is that both the resolutions have been passed by the respondent No.1 without giving any notice or opportunity of hearing to the petitioner. Carrying this contention further, the learned counsel for the petitioner contended that the effect of these resolutions are that the petitioner was held to be not entitled for the post of Secretary, his pay has been reduced and above that the amount which has been alleged to be paid in excess was ordered to be recovered and these are the civil consequences and as such before passing such resolutions against the petitioner, the principles of natural justice have to be followed.

5. On the other hand, the counsel for the respondents No.1 and 2 fairly conceded that before passing the resolutions aforesaid the petitioner was not given any notice or opportunity of hearing. However, the counsel for the respondents No.1 and 2 contended that these resolutions have been passed on the basis of the audit objection and as such the notice or opportunity of hearing was not required to be given to the petitioner. When the post of Secretary was not sanctioned then it is not obligatory on the part of the respondents No.1 and 2 to follow the principles of natural justice.

6. I have given my thoughtful consideration to the submissions aforesaid made by the counsel for the parties.

7. The consequences of these two resolutions are of serious nature. Not only the status of the petitioner

has been reduced but his pay scale has also been reduced as well as further the heavy amount is sought to be recovered. Whatever may be the reason for passing of the resolutions aforesaid, the substance of the matter is to be seen with the ensuing consequences thereof and it cannot be denied that these resolutions result in civil consequences to the petitioner of serious nature. The petitioner should have been afforded an opportunity to make his submissions before any decision is taken to reduce his status, pay and further order is made for recovery of amount alleged to have been paid to him in excess. Only on this short ground, this petition deserves to be accepted. As this petition deserves acceptance only on the aforesaid ground it is not necessary to advert to all other contentions raised by the learned counsel for the parties.

8. In the result, this special civil application succeeds and the resolutions of the respondent No.1 bearing No.408 dated 13th December, 1983 and bearing No.128 dated 30th November, 1983, annexures 'A' and 'E' respectively to this petition are quashed and set aside. Rule made absolute accordingly.

zgs/-